

<sup>2</sup> The Form K-WC E-1, for these injuries, which was likewise filed on July 2, 2001, alleges that claimant suffered “tendinitis and torn rotator cuff” injuries by “repetitive use of left arm/shoulder” by a series of accidents through his “last day of work on or about May 8, 2001.” This claim was assigned Docket No. 267,660.

Following a preliminary hearing on May 29, 2002, Judge Benedict ordered TTD “commencing November 7, 2001, until certified as having reached maximum medical improvement; or released to substantial and gainful employment.” In addition, Judge Benedict ordered claimant be provided medical treatment “with Dr. Amundson, until certified as having reached maximum medical improvement.” Dr. Amundson was specifically authorized to treat claimant’s neck as well as his back.

The issues respondent raises for Appeals Board (Board) review are: (1) Whether claimant’s neck injury arose out of and in the course of his employment with respondent and (2) whether the Administrative Law Judge (ALJ) exceeded his jurisdiction in awarding TTD benefits retroactive to November 7, 2001.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the record compiled to date, the Board finds and concludes that the ALJ’s Order should be affirmed.

On July 7, 2000, as claimant was carrying on his shoulder a “pie jaw” weighing approximately 85-95 pounds, he tripped on an air hose and fell forward into the deburrer table and then to the floor with the pie jaw on his chest. Then, as claimant was attempting to put the pie jaw on the table it rolled off and struck him on the hip.

Claimant immediately reported this accident to his supervisor, Thomas Mason. Claimant sought treatment the next morning with a chiropractor, Dr. Scott Iversen.<sup>3</sup>

Dr. Iverson’s treatment was authorized and paid for by respondent. On August 10, 2000, claimant was released by Dr. Iversen as “100% recovery to pre-accident status.”<sup>4</sup> Claimant returned to work for respondent but his low back symptoms continued. Claimant discussed his ongoing back symptoms with the personnel supervisor, Mr. Carl Chris Mayfield, and asked to see another physician, but this request was apparently refused.

In January, 2001 claimant began to have shoulder symptoms or these symptoms began to worsen. Claimant testified that it was about this same time that his neck symptoms worsened. He was first seen by Dr. Herl who diagnosed rotator cuff tendinitis and a possible tear. Although claimant alleges he also reported neck pain, Dr. Herl’s records do not mention neck complaints.

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<sup>3</sup> Dr. Iverson’s records show that he first treated claimant on July 6, 2000. The date of accident alleged is July 7, 2000. Accordingly, the next day would have been July 8 and not July 6. This discrepancy is not explained.

<sup>4</sup> P. H. Trans., Resp. Ex. B.

In April 2001, Dr. Herl referred claimant to Dr. Daniel T. Hinkin. After May 8, 2001, claimant was unable to keep working. In June, 2001 Dr. Hinkin performed surgery on claimant's shoulder. Respondent points out that before the surgery Dr. Hinkin's records likewise contain no mention of neck complaints, other than at the initial visit when claimant gave Dr. Hinkin a history of having made neck complaints to the chiropractor.<sup>5</sup> Beginning in June 2001, Dr. Hinkin's records consistently refer to neck symptoms.<sup>6</sup> Even when Dr. Hinkin determined that claimant had reached maximum medical improvement from the surgery, Dr. Hinkin stated in his October 25, 2001 report that "[t]here may be a component of cervical pain radiating to [claimant's] his shoulder. . . ." <sup>7</sup>

Claimant said he attempted to return to work with respondent after he was released with restrictions in October, 2001, but his restrictions could not be accommodated. Instead he applied for unemployment benefits. Those benefits were denied, however, due to a finding that claimant had voluntarily terminated his job with respondent.

Claimant was sent by his attorney for a medical evaluation by an orthopedic surgeon, Dr. Glenn M. Amundson, on October 24, 2001. His report states, in part:

The patient describes significant cervical pain, morning stiffness, and radiculopathy in a C7 nerve root distribution. There is some possible weakness of wrist flexors. Feel a cervical MRI is indicated. He also has pain in the lumbar region, more at the upper lumbar low thoracolumbar region. An MRI of this area is indicated due to the length of symptoms. I would like him to then return so that we can review the MRI and hopefully make a diagnosis and move on with appropriate treatment.<sup>8</sup>

Claimant returned to Dr. Hinkin for a followup examination on April 3, 2002. At that time Dr. Hinkin found that claimant had "symptoms suggesting a cervical radiculopathy and a lumbar radiculopathy." However, claimant did "not have convincing signs clinically of either of these conditions."<sup>9</sup> Dr. Hinkin recommended claimant "have MRIs of the cervical and lumbar spine due to the chronicity of his pain to identify any significant underlying

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<sup>5</sup> Dr. Hinkin's records refer to the chiropractor as a Dr. Sorell rather than Dr. Iverson, but Dr. Iverson does business as the Sorell-Iverson Clinic.

<sup>6</sup> P. H. Trans., Cl. Ex.1.

<sup>7</sup> P. H. Trans., Cl. Ex. 2.

<sup>8</sup> P. H. Trans., Cl. Ex. 1.

<sup>9</sup> P.H. Trans., Cl. Ex. 3.

pathology.”<sup>10</sup> Dr. Hinkin recommended physical therapy and an evaluation by an orthopedic spine surgeon. He also prescribed anti-inflammatories and pain medication and issued work restrictions limiting lifting to no more than ten pounds, no pushing or pulling of more than ten pounds on an occasional basis, no bending, stooping, squatting or kneeling. Respondent admits it is unable to accommodate these restrictions.<sup>11</sup>

An MRI of the cervical and lumbar spine was performed on April 10, 2002, which showed a moderately small herniation of the C6-C7 disk. No lumbar disk herniation or bulging was identified.<sup>12</sup>

The greater weight of the credible evidence supports the ALJ's finding that claimant's neck injury is work-related.

Finally, the ALJ did not exceed his jurisdiction in awarding TTD compensation retroactive to November 7, 2001, when those benefits were terminated by respondent. Whether claimant proved he was temporarily and totally disabled is not an issue the Board can consider on an appeal from a preliminary hearing order.<sup>13</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict on June 4, 2002, should be and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October 2002.

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BOARD MEMBER

c: Christopher J. McCurdy, Attorney for Respondent and Insurance Carrier  
Jeff R. Elder, Attorney for Claimant  
Bryce D. Benedict, Administrative Law Judge  
Director, Kansas Division of Workers Compensation

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<sup>10</sup> P.H. Trans., Cl. Ex. 3.

<sup>11</sup> P.H. Trans. at 10.

<sup>12</sup> P.H. Trans., Cl. Ex. 1.

<sup>13</sup> K.S.A. 44-534a; K.S.A. 44-551(b)(2)(A).

**ROISSON KIMBLE ROBB**

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**DOCKET NOS. 267,660; 267,661**